

**United States District Court
for the District of Utah**

Criminal Pretrial Instructions

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

United States District Court

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA

v.

ORDER SETTING CONDITIONS OF RELEASE

EZRA RAY HOWARD

Case Number: 1:09-CR-10 DB

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ☐ (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

- ☒ (7) The defendant shall:
- ☒ (a) maintain or actively seek verifiable employment.
 - ☐ (b) maintain or commence an educational program.
 - ☒ (c) abide by the following restrictions on his personal associations, place of abode, or travel:
maintain residence at address reported to PTS. No change without prior permission of PTS.
 - ☐ (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - ☒ (e) report on a regular basis to the supervising officer as directed.
 - ☐ (f) comply with the following curfew:
 - ☒ (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - ☐ (h) refrain from excessive use of alcohol.
 - ☒ (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - ☐ (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - ☐ (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - ☐ (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - ☐ (m) execute a bail bond with solvent sureties in the amount of \$
 - ☐ (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - ☐ (o) surrender any passport to
 - ☒ (p) obtain no passport
 - ☒ (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - ☐ (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - ☐ (s) submit to an electronic monitoring program as directed by the supervising officer.
 - ☒ (t) no travel outside the State of Utah without prior permission of PTS.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.



Signature of Defendant

Address

City and State Telephone

Directions to the United States Marshal

- (☒) The defendant is ORDERED released after processing.
- (☐) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: April 30, 2009

s/David Nuffer

Signature of Judicial Officer

Magistrate Judge David Nuffer

Name and Title of Judicial Officer

**United States District Court
for the District of Utah**

Criminal Pretrial Instructions

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If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DAVID TROSKY SUMMERS,
Plaintiff,

v.

DET. JOHN DOE et al.,
Defendants.

**ORDER TO AMEND
DEFICIENT COMPLAINT**

Case No. 1:09-CV-40 TS

District Judge Ted Stewart

Magistrate Judge David Nuffer

Plaintiff, David Trosky Summers, an inmate at the Utah State Prison, filed this *pro se* civil rights suit. See [42 U.S.C.S. § 1983 \(2009\)](#). Plaintiff was allowed to proceed *in forma pauperis*. See [28 id. 1915](#). Reviewing the complaint under [28 U.S.C. § 1915\(e\)](#), the Court has determined that Plaintiff's complaint is deficient as described below.

Deficiencies in Complaint:

The complaint does not clearly identify each named defendant. John Does must each be individually numbered and described in detail.

Instructions to Plaintiff

Under Rule 8 of the Federal Rules of Civil Procedure a complaint is required to contain "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the

pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." [Fed. R. Civ. P. 8\(a\)](#). The requirements of [Rule 8\(a\)](#) are intended to guarantee "that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest." [TV Communications Network, Inc. v. ESPN, Inc., 767 F. Supp. 1062, 1069 \(D. Colo. 1991\)](#), *aff'd*, [964 F.2d 1022 \(10th Cir. 1992\)](#).

Pro se litigants are not excused from compliance with the minimal pleading requirements of Rule 8. "This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted." [Hall v. Bellmon, 935 F.2d 1106, 1009 \(10th Cir. 1991\)](#). Moreover, "it is not the proper function of the Court to assume the role of advocate for a pro se litigant." [Id. at 1110](#). Thus, the Court cannot "supply additional facts, [or] construct a legal theory for plaintiff that assumes facts that have not been pleaded." [Dunn v. White, 880 F.2d 1188, 1197 \(10th Cir. 1989\)](#).

Plaintiff should consider the following points before refiling his complaint. First, the revised complaint must stand entirely on its own and shall not refer to, or incorporate by reference, any portion of the original complaint. See [Murray v.](#)

[Archambo, 132 F.3d 609, 612 \(10th Cir. 1998\)](#) (stating amended complaint supercedes original). Second, the complaint must clearly state what each individual defendant did to violate Plaintiff's civil rights. See [Bennett v. Passic, 545 F.2d 1260, 1262-63 \(10th Cir. 1976\)](#) (stating personal participation of each named defendant is essential allegation in civil rights action). Third, Plaintiff cannot name an individual as a defendant based solely on his or her supervisory position. See [Mitchell v. Maynard, 80 F.3d 1433, 1441, \(10th Cir. 1996\)](#) (stating supervisory status alone is insufficient to support liability under § 1983). Fourth, if Plaintiff's claims relate to the conditions of Plaintiff's current confinement Plaintiff should seeks assistance from the prison contract attorneys in preparing initial pleadings. And, finally, Plaintiff is warned that litigants who have had three *in forma pauperis* cases dismissed as frivolous or meritless will be restricted from filing future lawsuits without prepaying fees.

ORDER


Based on the foregoing, **IT IS HEREBY ORDERED** that:

- (1) Plaintiff shall have **THIRTY (30) DAYS** from the date of this order to cure the deficiencies noted above;
- (2) the Clerk's Office shall mail Plaintiff a copy of the Pro Se Litigant Guide;

(3) if Plaintiff fails to timely cure the above deficiencies according to the instructions here this action will be dismissed without further notice.

DATED this 29th day of April, 2009.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2009 APR 30 A 10:14

DISTRICT OF UTAH

RECEIVED

APR 29 2009

OFFICE OF
JUDGE TENA CAMPBELL

ORDER PREPARED BY:

Conrad H. Johansen, #8214
OLSEN SKOUBYE & NIELSON, LLC
Attorneys for Frontier Mechanical, LC
999 East Murray Holladay Road, Suite 200
Salt Lake City, Utah 84117
Telephone: (801) 365-1030
Facsimile: (801) 365-1031
Email: conrad@osnlaw.com

BY: _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA, for the
use of FRONTIER MECHANICAL, L.C.,

Plaintiff,

v.

BUD BAILEY CONSTRUCTION, INC.; and
FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,

Defendants.

**ORDER OF DISMISSAL OF ALL
CLAIMS WITH PREJUDICE**

Case No. 02:06CV00553 TC

Judge Tena Campbell

The Court, having reviewed the parties' Joint Motion and Stipulation of Mutual Dismissal of Claims with prejudice, hereby ORDERS:

1. All causes of action that were or could have been brought by Defendants against plaintiff Frontier Mechanical, L.C. are dismissed in their entirety with prejudice.

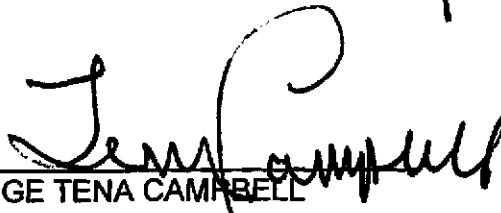
2. All causes of action that were or could have been brought by Plaintiff against defendants Bud Bailey Construction, Inc., and Fidelity and Deposit Company of

APR 28 2009

Maryland are dismissed in their entirety with prejudice.


3. Each party is to bear its own costs, expenses, and attorneys' fees incurred relative to this action.

DATED this 29 day of April, 2009.


JUDGE TENA CAMPBELL

APPROVED AS TO FORM:

BABCOCK SCOTT & BABCOCK

By 

Robert F. Babcock

Cody W. Wilson

Attorneys for Bud Bailey Construction, Inc.

Attorneys for Fidelity and Deposit Company of Maryland

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MARTIN VANDEMWERWE, Defendant.	AMENDED ORDER FOR COMPETENCY EVALUATION Case No. 2:07-CR-111
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IT IS HEREBY ORDERED THAT: the Court's April 27, 2009 Order for Competency Evaluation is vacated and replaced with the following Amended Order for Competency Evaluation:

Pursuant to 18 U.S.C. § 4241, the Court finds there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to understand the nature and consequences of the proceedings against him, or to assist properly in his case.

Pursuant to 18 U.S.C. §§ 4241 and 4247(b) and (c), prior to setting a hearing to determine the defendant's competency, the Court orders that a psychological examination of the defendant be conducted inquiring into the issues of competency of the defendant presently to proceed and that a written report be prepared of such examination, which is to be filed with the

Court in accordance with 18 U.S.C. § 4247, and copies provided to both counsel.

The report shall include: (1) The defendant's history and present symptoms; (2) a description of the psychological and medical tests that were employed, and their results; (3) the examiner's findings; and (4) the examiner's opinions as to whether the defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

For the purposes of conducting the psychological examination, the United States Marshal is directed to transport the defendant, without unnecessary delay, to a federal facility. Unless otherwise ordered, the United States Marshal is ordered to return the defendant to the District of Utah upon completion of the psychological examination.

The written report of the examination shall be completed and filed within a reasonable period, not to exceed thirty (30) days upon completion of the psychological examination, and not to exceed fifteen (15) additional days upon a showing that additional time is necessary to observe and evaluate the defendant.

Dated this 30th day of April, 2009.

A handwritten signature in black ink, reading "Dee Benson". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Dee Benson
United States District Judge

JOSHUA M. BOWLAND (10075)
ATTORNEY FOR DEFENDANT
341 S. Main St., Suite 406
Salt Lake City, Utah 84111
Tel. 801.746.4044
Fax. 801.746.5613
joshbowland@aol.com

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

APR 30 2009

D. MARK JONES, CLERK
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL WOODROW SCHULTZ,

Defendant.

)
)
) **ORDER TO CONTINUE SENTENCING**
)
)
)

)
) Case No. 2:07cr889
)
)

)
) Honorable Judge Clark Waddoups
)


Based upon the motion filed by Defendant to continue the original sentencing date:

IT IS ORDERED that Sentencing set on April 29, 2009 at 3:00 p.m., be continued.

IT IS FURTHER ORDERED that this Court will set another sentencing date in this matter.

DATED this 30 day of April, 2009.

BY THE COURT:



Honorable Judge Clark Waddoups

FILED
U.S. DISTRICT COURT

2009 APR 29 P 2:24

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Edward W. McBride, Jr. (8236)
EDWARD W. McBRIDE, JR., P.C.
2319 South Foothill Drive, Suite 220
Salt Lake City, Utah 84109
Telephone: (801) 531-1030
Facsimile: (801) 531-1224

Attorney for Sophia Stewart

IN THE UNITED STATES FEDERAL DISTRICT COURT

CENTRAL DISTRICT, STATE OF UTAH

SOPHIA STEWART,

Plaintiff,

v.

MICHAEL T. STROLLER, JONATHAN
LUBELL, DEAN WEBB, GARY
BROWN and JOHN DOES I-X,
individuals whose identities are not yet
known,

Defendants.

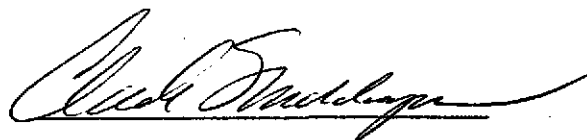
**ORDER FOR WITHDRAWAL OF
PLAINTIFF'S COUNSEL, EDWARD
W. McBRIDE, JR., P.C.**

Case No.: 2:07-cv-00552

Judge: Waddoups

It is hereby ordered that Edward W. McBride, Jr. P.C., be withdrawn from the
above captioned case, pursuant to DUCivR 83-1.4.

DATED this 27th day of April, 2009.



Hon. Judge Waddoups

Wallace T. Boyack (0404)
Boyack Ashton LC
2290 East 4500 South, Suite 130
Salt Lake City, UT 84117
Telephone: 801-278-9925
Attorneys for Defendants Diatect International Corporation and David H. Andrus

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

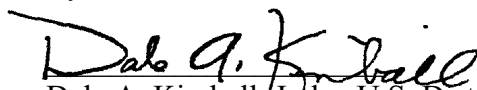
U. S. Securities and Exchange Commission, :	:	
	:	
Plaintiff, :	:	ORDER
	:	
v. :	:	
	:	
Diatect International Corporation, and :	:	
David H. Andrus, Jay W. Downs, and :	:	Civil No.2:07-cv-709
Michael P. McQuade, :	:	
	:	Judge Dale A. Kimball
Defendants. :	:	
	:	

Based on the stipulation of Plaintiff U.S. Securities and Exchange Commission and Defendant David H. Andrus and Defendant Diatect International Corporation and for good cause appearing therefor: IT IS HEREBY ORDERED that Defendant Andrus' and Defendant Diatect's expert report shall be continued and extended to and including May 30, 2009.

IT IS FURTHER ORDERED that Defendant Andrus' and Defendant Diatect's time for filing an opposition and response to Plaintiff's Motion for Summary Judgment shall be extended to and including June 3, 2009.

Dated this 30th day of April 2009.

By the Court


Dale A. Kimball, Judge U.S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN FEHER and VIRGINIA FEHER,

Plaintiffs,

v.

KENNETH “BUZZ” BATES,

Defendant.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:07CV732 DAK

This matter is before the court on Defendant Kenneth “Buzz” Bates’s (“Mr. Bates”) Motion for Summary Judgment. A hearing on the motion was held on April 23, 2009. At the hearing, Mr. Bates was represented by Murry Warhank and John R. Lund. Plaintiffs John and Virginia Feher (“Plaintiffs” or “Mr. Feher” and “Mrs. Feher,” respectively) were represented by Peter C. Collins. Before the hearing, the court carefully considered the memoranda and other materials submitted by the parties. Since taking the motion under advisement, the court has further considered the law and facts relating to this motion. Now being fully advised, the court renders the following Memorandum Decision and Order.

On the night of December 6, 2006, Mr. Feher suffered injuries resulting from his truck striking a cow that had wandered onto Highway US-191, south of Moab in San Juan County, Utah. It is undisputed that Mr. Bates had exclusive rights to pasture his 300-350 cattle in a certain area on the west side of Highway 191 during the winter, and it is also undisputed that the

cow in question belonged to Mr. Bates. There is no dispute that a gate on Mr. Bates's property, near the scene of the accident, had been left open.¹

Plaintiffs assert that Mr. Bates willfully and/or negligently permitted a number of his cows to stray and/or remain unaccompanied on Highway 191 near milepost 116 and that this negligence proximately caused Mr. Feher's injuries. Mr. Bates has moved for summary judgment, contending that ranchers have no duty to protect the public from the actions of unknown third parties.

In making such an argument, Mr. Bates ignores his inescapable duty to exercise reasonable care to keep his cattle off the highway.² See Utah Code Ann. § 41-6a-407. Taken to its logical conclusion, Mr. Bates's contention would be that a rancher could never be liable for damages caused by escaped livestock if an unknown third party leaves a gate open, regardless of the foreseeability of the gate being left open, the condition of a fence or gate, the history and/or

¹ Plaintiffs do not dispute that there are dirt roadways dedicated to public usage that are on the public lands leased by Mr. Bates to pasture his cattle and that Mr. Bates was prohibited from locking the gates over the public dirt roadways.

² Section 41-6a-407 of the Utah Code provides that

(1)(a) A person who owns ... any livestock may not willfully or negligently permit any of the livestock to stray or remain unaccompanied on a highway, if both sides of the highway are separated from adjoining property by a fence

. . . .

(3) In any civil action brought for damages caused by collision with any domestic animal or livestock on a highway, there is no presumption that the collision was due to negligence on behalf of the owner . . . of the domestic animal or livestock.

frequency of cows escaping, the strength or laxity of a rancher's cattle supervision; the frequency of a rancher's gate monitoring, or the efforts he had otherwise taken to insure that his cattle did not escape. Mr. Bates, however, is simply wrong as a matter of law, and he is therefore not entitled to judgment as a matter of law.

Plaintiffs have created genuine issues as to many material facts, such as, but not limited to: (1) the whether Mr. Bates checked on the status of the gates before he left town, (2) the quality of his gate inspection; (3) whether cows had previously escaped from the pasture and how often; (4) what efforts Mr. Bates had taken to prevent his cows from escaping; (5) Mr. Bates' instructions to Mr. Leech regarding inspecting the gates while Mr. Bates was out of town; (6) how often Mr. Leech monitored the gates while Mr. Bates was out of town; (7) the quality of Mr. Leech's inspection(s); (8) the quality of Mr. Leech's efforts to contain the cattle after he discovered—two or three days before the incident at issue—that four or five cows had escaped and that the cattle guard had been rendered ineffectual due to the snow; (9) whether Mr. Bates knew that there was a problem with gates being left open; (10) if Mr. Bates knew there was a problem with open gates, what efforts did he take to remedy the problem; and (11) whether Mr. Bates placed a “please close gate” sign on the gate in question, as he apparently had done with other gates.

In sum, a jury must decide whether Mr. Bates failed to exercise reasonable care to prevent his cattle from escaping from his pasture, or, stated another way, whether Mr. Bates's supervision of his cattle was adequate to absolve him of negligence. Plaintiffs do not dispute that they must prove by a preponderance of the evidence that Mr. Bates was negligent and that there is no

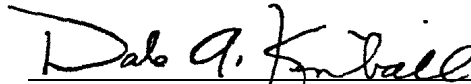
presumption of negligence under Utah law.

CONCLUSION

For the foregoing reasons, Mr. Bates's Motion for Summary Judgment [docket # 21] is DENIED. The court will soon enter the Stipulated Scheduling Order proposed by the parties and will also issue a Trial Order regarding the 4-day jury trial set to begin on July 7, 2009.

DATED this 30th day of April, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN FEHER and VIRGINIA FEHER,

Plaintiffs,

v.

KENNETH “BUZZ” BATES,

Defendant.

TRIAL ORDER

Case No. 2:07CV732 DAK

This case is set for a four-day jury trial to begin on **Tuesday, July 7, 2009** at 8:30 a.m.

In order to expedite the conduct of the trial in this case, counsel are instructed as follows:

A. Proposed Voir Dire and Verdict Form

1. Proposed Voir Dire

The parties must file any proposed voir dire by no later than **July 1, 2009**.

2. Special Verdict Form

The parties must file a proposed special verdict form by no later than **July 1, 2009**. In addition to filing a proposed special verdict form, the parties must also send the proposed special verdict form via email to [“utdecf_kimball@utd.uscourts.gov”](mailto:utdecf_kimball@utd.uscourts.gov) in WordPerfect or Word format.

B. Jury Instructions

A copy of the court’s stock civil jury instructions are attached to this Trial Order. The stock jury instructions should *not* be resubmitted to the court with the parties’ proposed jury

instructions. All applicable stock jury instructions will be used at trial, absent a compelling reason why a particular instruction should be modified or should not be used. The parties shall not, absent a compelling reason, submit instructions that are duplicative of the stock jury instructions.

All additional substantive jury instructions must be submitted according to the following procedure:

1. The parties are required to jointly submit one set of *stipulated* final instructions. To this end, the parties must serve their proposed instructions upon each other by **June 5, 2009**. The parties must then meet and confer to agree on a single set of jury instructions, to the extent possible.
2. If the parties cannot agree upon a complete set of final instructions, they may submit a supplemental set of those instructions upon which they cannot agree. However, the parties are expected to agree upon the majority of the substantive instructions for the case.
3. The stipulated jury instructions and each party's supplemental jury instructions, which must include citations to authority, shall be filed by **June 17, 2009**. In addition, by the same date, the parties shall email (in WordPerfect or Word format) the proposed stipulated instructions and any supplemental proposed instructions to the chambers email address listed above.
4. By no later than **June 24, 2009**, each party must file any objections to the supplemental instructions proposed by the other party. All such objections must

recite the proposed disputed instruction in its entirety and specifically highlight the objectionable language in the proposed instruction. Each objection must contain citations to authority and a concise argument explaining why the instruction is improper. If applicable, the objecting party should submit an alternative instruction addressing the subject or principle of law. By the same date, the party filing any objections shall also email (in WordPerfect or Word format) the objections to the chambers email address listed above.

5. By no later than **July 1, 2009**, the parties may file and serve a concise written argument supporting their proposed instructions to which the other party has objected.

C. Pretrial Order

A stipulated Pretrial Order must be filed by **June 2, 2009**. The form of the Pretrial Order should generally conform to the approved form that is reproduced as Appendix IV to the Local Rules of Practice.

D. Motions in Limine

All motions in limine shall be filed by **June 18, 2009**. Responses to the motions shall be filed by **June 25, 2009**. A hearing on the motions, if necessary, will be held during the week of **June 29, 2009**.

E. Exhibits

All exhibits must be premarked before trial. Plaintiffs' exhibits should be marked numerically, and Defendant's exhibits should be marked alphabetically.

F. Trial Schedule

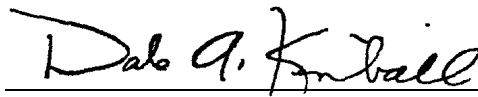
The court runs its trial schedule from 8:30 a.m. to approximately 2:00 p.m., with two fifteen-minute breaks.

G. Pretrial Conference

In light of this Trial Order, the pretrial conference currently set for June 22, 2009 at 2:30 p.m. is VACATED.

DATED this 30th day of April, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge

JUDGE KIMBALL'S
STOCK JURY INSTRUCTIONS
CIVIL CASES

(Some instructions might not apply or might need to be tailored to the specific case)

JURY INSTRUCTION NO. ____

Now that you have heard the evidence and are about to hear the argument, it is my duty to give you the instructions of the Court concerning the law applicable to this case. It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the law as I instruct you and the evidence in the case.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; it is your function as jurors.

Justice through trial by jury depends upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors, and to arrive at a verdict by applying the same rules of law, as given in these instructions. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the circumstances.

JURY INSTRUCTION NO. ____

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, all facts that may have been admitted or stipulated, and the applicable presumptions that will be stated in these instructions.

Statements and arguments of counsel are not evidence in this case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

During the course of trial, it often becomes the duty of counsel to make objections. You should not consider or be influenced by the fact that objections have been made. Any evidence to which an objection was made and sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside of this courtroom is not evidence and must be entirely disregarded. You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts that you find have been proved, such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion that reason and common sense would lead you to draw from facts that are established by the evidence in the case.

JURY INSTRUCTION NO. ____

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as the testimony of an eye witness. The other is indirect or circumstantial evidence, which is proof of a chain of circumstances pointing to the existence or non-existence of certain facts. The law makes no distinction between the weight to be given to either direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

JURY INSTRUCTION NO. ____

You are the exclusive judges of the credibility of the witnesses and the weight of the evidence. You may believe or disbelieve all or any part of any witness' testimony. In judging the weight of the testimony and the credibility of the witnesses you have a right to take into consideration their bias, their interest in the result of the suit, their relationship to any of the parties in the case, or any probable motive or lack thereof to testify fairly, if any is shown. You may consider the witnesses' deportment upon the witness stand, the reasonableness of their statements, their apparent frankness or candor, or the want of it, their opportunity to know, their ability to understand, their capacity to remember, and the extent to which their testimony has been either supported or contradicted by other credible evidence in the case. You should consider these matters together with all of the other facts and circumstances that you may believe have a bearing on the truthfulness or accuracy of the witnesses' statements.

JURY INSTRUCTION NO. ____

Inconsistencies or discrepancies in the testimony of a witness or between the testimonies of different witnesses may or may not be cause to discredit the testimony of a witness. Two persons may see or hear the same event differently or reach different conclusions from the same facts. In weighing the effect of an inconsistency, consider the importance of the matter to which it pertains and whether the inconsistency may have resulted from innocent error, lapse of memory, or intentional falsehood. If there are apparent discrepancies in the evidence, you may be able to reconcile them, or you may have to decide which of two or more conflicting versions of the facts you will accept.

JURY INSTRUCTION NO. ____

If you believe any witness has willfully testified falsely as to any material matter, you may disregard the entire testimony of such witness, except as it may have been corroborated by other credible evidence.

JURY INSTRUCTION NO. ____

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who, by education, study, and experience, has become an expert in any art, science, or profession, and who is called as a witness, may give his or her opinion as to any such matter in which he or she is versed and which is material to the case.

You are not bound, however, by such an opinion. You should judge expert opinion testimony just as you judge any other testimony. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment the reasons given for it are unsound.

JURY INSTRUCTION No. ____

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection that should control during your deliberations.

JURY INSTRUCTION No. ____

In this trial, certain testimony has been read to you by way of deposition. A deposition is testimony taken under oath before trial and preserved in one form or another. It is entitled to the same consideration as if the witness had personally appeared.

JURY INSTRUCTION NO. ____

In this case, Plaintiff has the burden of proving their claims against Defendant by a preponderance of the evidence. By a preponderance of the evidence, as that term is used in these instructions, is meant that evidence, which to your minds, is of the greater weight. The evidence preponderates to the side which, to your minds, seems to be the most convincing and satisfactory.

The preponderance of the evidence is not alone determined by the number of witnesses, nor the amount of testimony or documentary evidence, but rather the convincing character of the testimony and other evidence, and the inferences reasonably to be drawn therefrom, weighed by the impartial minds of the jury. This rule does not require proof to an absolute certainty, nor does it require proof beyond a reasonable doubt which is the standard applied in criminal cases. A party has succeeded in carrying the burden of proof by a preponderance of the evidence on an issue of fact if, after consideration of all the evidence in the case, the evidence favoring his or her side of the issue is more convincing to you than not.

JURY INSTRUCTION NO. ____

Your verdict must be based solely upon the evidence developed at this trial, or the lack of evidence. It would be improper for you to consider any personal feelings you may have about one of the parties' race, religion, national origin, sex, or age.

It would be equally improper for you to allow any feelings you might have about the nature of the claims against the Defendant to influence you in any way.

The parties in this case are entitled to a trial free from prejudice. Our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

[IF APPLICABLE:]

Defendant is a corporation. A corporation is entitled to the same treatment as a private individual. You must consider and decide this case as a case between persons of equal rights, equal worth, and equal standing. All persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

JURY INSTRUCTION NO. ____

Plaintiff bears the burden of proving by a preponderance of the evidence that they not only suffered damages but the amount of damages as well.

JURY INSTRUCTION NO. ____

Damages must be reasonable. You are not permitted to award speculative damages, which means compensation for a detriment which, although possible, is remote, or conjectural.

The damages that you award must be fair and reasonable, neither inadequate nor excessive. You should not award compensatory damages for speculative injuries, but only for those injuries that the Plaintiff has actually suffered or which they are reasonably likely to suffer in the near future.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a Plaintiff to prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

JURY INSTRUCTION NO. ____

In this case you may not include in any award to Plaintiffs, any sum for the purpose of punishing Defendant, or to make an example of them for the public good or to prevent other incidents. **[Use if punitive damages are not sought]**

JURY INSTRUCTION NO. ____

Plaintiff has alleged that, as a result of Defendant's conduct, they have suffered pain,

suffering and humiliation. Plaintiff has the burden of proving any compensatory damages by a preponderance of the evidence. If Plaintiff does not establish by a preponderance of the evidence that they have experienced pain, suffering, and humiliation that was proximately caused by Defendant's alleged wrongful conduct, then they cannot recover compensatory damages.

If you determine that Plaintiff has proven by a preponderance of the evidence that they have experienced pain, suffering, and humiliation that was proximately caused by Defendant's alleged wrongful conduct, you may award them damages for those injuries.

JURY INSTRUCTION NO. ____

The law forbids you to decide any issue in this case by resorting to chance. If you decide that a party is entitled to recover, you may then determine the amount of damages to be awarded.

It would be unlawful for you to agree in advance to take the independent estimate of each juror, then total the estimates, draw an average from the total, and to make the average the amount of your award. Each of you may express your own independent judgment as to what the amount should be. It is your duty to thoughtfully consider the amounts suggested, test them in the light of the law and the evidence and, after due consideration, determine, which, if any, of such individual estimates is proper.

JURY INSTRUCTION NO. ____

The fact that I have instructed you concerning damages is not to be taken as an indication that I either believe or do not believe that Plaintiffs are entitled to recover such damages. The instructions in reference to damages are given as a guide in case you find from a preponderance of the evidence that Plaintiff is entitled to recover. However, if you determine that there should

be no recovery, then you will entirely disregard the instructions given you upon the matter of damages.

JURY INSTRUCTION NO. ____

It is your duty, as jurors, to consult with one another and to deliberate with a view of reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your

fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges—judges of the facts.

Your sole interest is to seek the truth from the evidence in the case.

JURY INSTRUCTION NO. ____

When you retire to deliberate, you should first select one of your number to serve as foreperson to preside over your deliberations and be your spokesperson here in Court.

JURY INSTRUCTION NO. ____

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a Court Security Officer, signed by your foreperson, or by one or more members of the jury. No member of the jury should attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case, other than in writing or orally here in open Court.

You will note from the oath about to be taken by the Court Security Officer that he, as well as all other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person—not even to the Court—how the jury stands numerically or otherwise, until you have reached a unanimous verdict.

This case is being submitted to you by a Special Verdict, which asks you to answer certain questions. When you have answered all the questions required to be answered, please have your foreperson sign the Special Verdict form and advise the Court Security Officer that such has been done. You will then be returned to the courtroom, where the Special Verdict will be read.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

ALLEN D. WILLIAMS

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. 2:07 CV 0926 BCW

**ORDER GRANTING PETITION FOR
EAJA ATTORNEY'S FEES**

Magistrate Judge Brooke C. Wells

Before the court is Allen Williams' motion for attorney fees,¹ filed on December 29, 2008, pursuant to 28 U.S.C. § 2412(a) and (d), the Equal Access to Justice Act (EAJA).² The EAJA provides for an award of attorneys fees to a prevailing party "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust."³ The Commissioner contests Plaintiff's motion arguing his position was substantially justified and therefore an award of fees under the EAJA is not appropriate.

Following briefing by the parties, the court heard oral argument on September 12, 2008. At the conclusion of oral argument the court found that the ALJ erred at step two of the Social Security Administration's (SSA) five-part sequential evaluation process, an error which ultimately undermined the ALJ's analysis of the evidence at

¹Docket no.28.

²See, 28 U.S.C. § 2412(d)(1)(A).

³*Id.*

steps three, four and five.⁴ Consequently, the court remanded the decision for further administrative proceedings consistent with the court's decision.⁵

Plaintiff now seeks an award of attorney's fees and costs pursuant to the EAJA in the amount of \$6,516.80.⁶ Under the EAJA, a fee award is required if: "(1) plaintiff is a 'prevailing party'; (2) the position of the United States was not 'substantially justified'; and (3) there are no special circumstances that make an award of fees unjust."⁷ Here it is undisputed that plaintiff is the prevailing party and there are no special circumstances that make an award unjust. Thus, the only dispute is whether the Commissioner's position was substantially justified.

The Commissioner bears the burden of showing that his position was substantially justified.⁸ The test for substantial justification is one of both "reasonableness in law and fact."⁹ Accordingly, the government's position must be "justified to a degree that could satisfy a reasonable person."¹⁰ When an area of law is

⁴Memorandum Decision And Order, dated October 7, 2008. p. 1-2.

⁵ *Id.* at p. 7.

⁶The fees requested include 5.7 hours in 2007 at the rate of \$166.00 per hour and 32.2 hours in 2008 at the rate of \$173.00 per hour. The Commissioner does not object to the amount of attorney fees and costs sought by Plaintiff.

⁷*Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007) (quoting, 28 U.S.C. § 2412(d)(1)(A)).

⁸*See, Gilbert v. Shalala*, 45 F.3d 1391, 1394 (10th Cir. 1995).

⁹*Id.* at 1394.

¹⁰*Pierce v. Underwood*, 487 U.S.552, 565 (1988).

“unclear or in flux, it is more likely that the government’s position will be substantially justified.”¹¹

The substantial evidence standard found under the Social Security Act¹² should not, however, be conflated with the substantial justification requirement found under the EAJA. To do so would improperly result in “an automatic award of attorney’s fees in all [S]ocial [S]ecurity cases in which the government was unsuccessful on the merits.”¹³ Moreover, “[t]he reversal of an agency [decision] for lack of substantial evidence does not raise a presumption that the agency was not substantially justified.”¹⁴ Instead, “[t]he government’s success or failure on the merits at each level may be evidence of whether its position was substantially justified, but that success or failure alone is not determinative of the issue.”¹⁵

Here, the court found that the ALJ’s failure at step two to properly consider the available evidence on plaintiff’s mental impairments not only created error but also undermined the ALJ’s analysis at steps three, four and five.¹⁶ More specifically, failure

¹¹ *Martinez v. Sec’y of Health & Human Servs.*, 815 F.2d 1381, 1383 (10th Cir. 1987).

¹² See, 42 U.S.C. § 405 (g).

¹³ *Hadden v. Bowne*, 851 F.2d 1266, 1269 (10th Cir. 1988).

¹⁴ *Pullen v. Bowen*, 820 F.2d 105, 108 (4th Cir. 1987). See also, *Evans v Sullivan*, 928 F.2d 109, 110 (4th Cir. 1991).

¹⁵ *Hadden*, at 1266.

¹⁶ Memorandum Decision and Order, p. 3.

to consider step two mental impairments prohibited the ALJ from providing a thorough discussion of whether plaintiff's mental impairments met or equaled the listed step three impairment.¹⁷ The step three analysis was not supported by substantial evidence and failed to give proper consideration or weight to Dr. Smith's or Mr. Mecham's respective opinions.¹⁸ Moreover, the ALJ's findings at step four were not supported by substantial evidence and failed to include the findings of Dr. Allen, Dr. Smith and Dr. Mecham as to Plaintiff's other moderate mental impairments and functional mental limitations.¹⁹

Notwithstanding these findings, the government maintains that its position in this litigation was substantially justified. Citing to the Tenth Circuit decision of *Carpenter v Astrue*,²⁰ the government argues that any error committed at step two was harmless because the ALJ "considered Plaintiff's mental impairments at the later steps of the sequential evaluation process by discussing the mental impairments at step three and expressly restricting Plaintiff to only unskilled work that did not require significant public contact."²¹

The court finds the government's arguments unpersuasive. At stage two, the ALJ essentially failed to properly consider medical evidence from Plaintiff's treating

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

²⁰ *Carpenter v. Astrue*, 537 F.2d 1264, 1266 (10th Cir.).

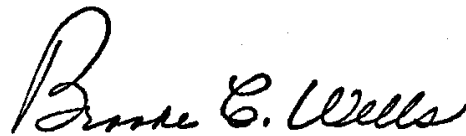
²¹ Defendant's Response, p. 3.

professionals. This error undermined the ALJ's analysis of the evidence at the step three disability evaluation, the step four mental and physical residual functional capacity evaluation and the step five determination on capability to perform other available work. The ALJ's failure to adequately consider and discuss the evidence in the record and incorporate it into his conclusions amounts to a series of errors that undermines the government's position. The court finds therefore that the government's position is not substantially justified.²²

Finally, although Defendant has not contested the amount of attorneys fees sought by Plaintiff, the court has *sua sponte* reviewed the requested amount and finds it to be reasonable.

Plaintiff's motion for attorneys fees is hereby GRANTED.

DATED this 29th day of April, 2009.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is fluid and cursive, with the first name "Brooke" being more prominent and the last name "Wells" following in a similar style.

Brooke C. Wells
United States Magistrate Judge

²² See, *Corbin v. Apfel*, 149 F.3d 1051 (10th Cir. 1998) (citing, *Williams v. Bowen*, 966 F.2d 1259, 1261 (9th Cir. 1991)).

STEPHANIE J. HOGGAN, #9085
2469 East 7000 South, Suite 206
Salt Lake City, Utah 84121
Telephone: (801) 673-3593
Facsimile: (801) 944-0660

Attorney for Taylors' Boat Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>PEDRO LOERA, an individual</p> <p>Plaintiff,</p> <p>vs.</p> <p>TAYLOR'S BOATS INC., a Utah Corporation</p> <p>Defendants.</p>	<p>ORDER</p> <p>Case No.: 2:07cv00975</p> <p>Judge: Paul Warner</p>
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Before the court is Defendant Taylor's Boats Inc.'s Motion to Dismiss. Rule 41(b) of the Federal Rules of Civil Procedure and corresponding local rule DUCivR 41-2 allows for the dismissal of an action when a Plaintiff fails to prosecute or comply with the rules or a court order.

Plaintiff was served with Defendant's Motion to Dismiss on or about March 5, 2009. Plaintiff failed to file a response and almost sixty days has lapsed since the motion was received. See DUCivR 7-1(d) ("Failure to respond timely to a motion may result in the court's granting the motion without further notice."). In addition, the Plaintiff did not respond to this Court's order dated September 12, 2008, instructing him to file a notice with the court naming new counsel or appear pro se. Moreover, with the exception of prior counsel for the

Plaintiff's withdrawal, it is noted that this case has been dormant for almost one year,

For these reasons, Defendant's motion to dismiss is GRANTED, and this complaint is dismissed without prejudice.

IT IS SO ORDERED.

DATED this 29th day of April, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul M. Warner", is written over a light blue rectangular background.

PAUL M. WARNER
United States Magistrate Judge

STEVEN B. KILLPACK, Federal Defender (#1808)
L. CLARK DONALDSON, Assistant Federal Defender (#4822)
UTAH FEDERAL DEFENDER OFFICE
Attorney for Mr. Jardine
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Facsimile: (801) 524-4060

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW D. JARDINE,

Defendant.

ORDER TO MODIFY CONDITIONS OF
RELEASE

Case No. 2:08-CR-29 CW

Chief Magistrate Judge David Nuffer

Based on motion of the defendant and good cause shown:

IT IS HEREBY ORDERED that the defendant, Matthew D. Jardine, be allowed to live with his grandmother Wanda Andrew in Tremonton, Utah for four weeks beginning May 4, 2009 and returning on June 1, 2009.

IT IS FURTHER ORDERED that all other conditions of release remain in effect.

DATED this 30th day of April, 2009.

BY THE COURT:



HONORABLE DAVID NUFFER
United States District Court Chief Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

CARLOS VILLANUEVA-GARCIA,

Defendant.

ORDER

Case No. 2:08CR-253 TS

The defendant, Carlos Villanueva-Garcia by and through counsel, Benjamin A. Hamilton, and the government by and through counsel, Tim Barnes, do hereby stipulate to the following schedule for the filing of memorandums in regard to the defendant's pending Motion to Suppress:

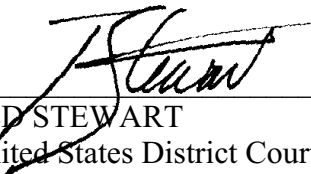
Defendant's Memorandum due: May 29, 2009.

Government's Response due: June 19, 2009.

Defendant's Reply due June 26, 2009.

IT IS SO ORDERED this 30th day of April, 2009.

BY THE COURT:



TED STEWART
United States District Court Judge

FILED
UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central

District of

Utah

2009 APR 30 A 10:30

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

BY: Gregg Stephen Bussey
DEPUTY CLERK

Case Number:

DUTX 2:08CR00404-001 TC

USM Number:

15474-081

Keith C. Barnes

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 2425	Use of Interstate Facility to Transmit Information About a Minor		1s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

04/17/2009

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell
Name and Title of Judge

Chief, United States District Court Judge

4-29-2009
Date

DEFENDANT: Gregg Stephen Bussey
CASE NUMBER: 2:08CR00404-001 TC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 Months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant serve his sentence at the facility located in Seagoville, Texas and participate in sex offender treatment.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Gregg Stephen Bussey
CASE NUMBER: 2:08CR00404-001 TC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

120 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☒ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Gregg Stephen Bussey
CASE NUMBER: 2:08CR00404-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The Court orders that the presentence report may be released to the state sex-offender registration agency if required for purposes of sex-offender registration.
2. The defendant shall participate in a sex-offender treatment program as directed by the probation office.
3. The defendant is restricted from contact with individuals who are under 18 years of age without adult supervision as approved by the probation office.
4. The defendant shall abide by the following occupational restrictions: Any employment shall be approved by the probation office. In addition, if third-party risks are identified, the probation office is authorized to inform the defendant's employer of his supervision status.
5. The defendant shall not view, access, or possess sexually explicit materials in any format.
6. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
7. The defendant shall participate in the Computer Restriction and Monitoring Program under a copayment plan. The defendant shall comply with the provisions outlined in the Restricted Internet Access Agreement.

DEFENDANT: Gregg Stephen Bussey
CASE NUMBER: 2:08CR00404-001 TC

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 2,000.00	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0	\$ _____ 0	
--------	------------	------------	--

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

DEFENDANT: Gregg Stephen Bussey
CASE NUMBER: 2:08CR00404-001 TC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
A fine of \$2,000 is imposed which is due immediately, and shall be payable at a minimum rate of \$100 per month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 4 - 10

are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JAMES SAMUEL BINGHAM,

Plaintiff,

v.

**UTAH STATE DEPARTMENT OF
WORKFORCE SERVICES and CHAU
NGUYEN,**

Defendants.

ORDER

Case No. 2:08-cv-238-CW-PMW

District Judge Clark Waddoups

Magistrate Judge Paul M. Warner

This case has been referred to Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(A).¹ James Samuel Bingham’s (“Plaintiff”) motion for leave to proceed in forma pauperis has been granted.² Before the court is Plaintiff’s second motion for appointment of counsel.³

As the court noted in its order denying Plaintiff’s first motion for appointment of counsel,⁴ “[t]he appointment of counsel in a civil case is left to the sound discretion of the district court.” *Shabazz v. Askins*, 14 F.3d 533, 535 (10th Cir. 1994). Although “[t]here is no constitutional right to appointed counsel in a civil case,” *Durre v. Dempsey*, 869 F.2d 543, 547

¹ See docket nos. 6, 9.

² See docket nos. 1, 2.

³ See docket no. 12.

⁴ See docket no. 8.


(10th Cir. 1988) (per curiam), the court may appoint an attorney to represent a litigant who is unable to afford counsel. *See* 28 U.S.C. § 1915(e)(1). When deciding whether to appoint counsel, the court must consider certain factors, “including the merits of the litigant’s claims, the nature of the factual issues raised in the claims, the litigant’s ability to present his claims, and the complexity of the legal issues raised by the claims.” *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quotations and citations omitted).

Considering those factors in this case, the court again concludes: (1) it is not clear whether Plaintiff’s claims have merit, (2) the factual and legal issues raised by Plaintiff’s claims do not appear to be complex, and (3) Plaintiff does not appear to be unable to adequately pursue this case. *See id.* For those reasons, Plaintiff’s motion for appointment of counsel is **DENIED**.

IT IS SO ORDERED.

DATED this 29th day of April, 2009.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", written in black ink.

PAUL M. WARNER
United States Magistrate Judge

RECEIVED CLERK

APR 28 2009

U.S. DISTRICT COURT

FILED
U.S. DISTRICT COURT

2009 APR 29 P 2:24

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Stephen B. Watkins, Bar No. 3400
Paul M. Halliday, Jr., Bar No. 5076
Paul M. Halliday, Bar No. 1316
HALLIDAY & WATKINS, P.C.
Attorneys for Defendant
376 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

NEWPARK CONDOMINIUMS INC., a Utah
corporation,

Plaintiff,

vs.

PHIL SCALISI, an individual,

Defendant.

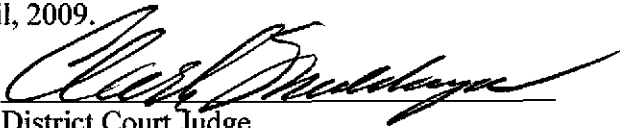
ORDER OF DISMISSAL
WITH PREJUDICE

Case No. 2:08-CV-616

Judge Clark Waddoups

In accordance with the Stipulation for Dismissal With Prejudice filed herewith, IT IS
HEREBY ORDERED that the subject case is dismissed with prejudice.

Executed this 29th day of April, 2009.


District Court Judge

Approved as to form and content:

 4/22/09
Scott H. Martin, Attorney for Plaintiff

DENNIS J. CONROY (0712)
SPENCER C. SIEBERS (8320)
SILVESTER & CONROY, L.C.
1371 East 2100 South, Suite 200
Salt Lake City, Utah 84105
Telephone: (801) 532-2266
Email: djc@silconlaw.com

Attorneys for Lancer Insurance Company

**IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE DISTRICT OF UTAH, CENTRAL DIVISION**

LANCER INSURANCE COMPANY
Plaintiff,

vs.

JEREMY LEFEVRE and
TIFFANY PETERSON

Defendants.

**ORDER OF DISMISSAL WITH
PREJUDICE**


Civil No. 2:08-CV-704 TS

Based upon the Joint Motion and Stipulation to Dismiss with Prejudice submitted by the parties and good cause appearing therefor,

IT IS HEREBY ORDERED that the above-entitled action and all claims brought by Lancer Insurance Company against defendants Jeremy LeFevre and Tiffany Peterson are dismissed with prejudice and on the merits. Each party shall bear its own attorneys' fees and costs incurred herein.

DATED this 30th day of April 2009.

BY THE COURT:



The Honorable Ted Stewart

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

DEROYALE ARDEANE JOHNSON,
Plaintiff,

v.

SHYLAH RICHINS et al.,
Defendants.

**ORDER DIRECTING SERVICE OF
PROCESS, ANSWER AND/OR
DISPOSITIVE MOTION**

Case No. 2:08-CV-945 CW

District Judge Clark Waddoups

Magistrate Judge Brooke Wells

Plaintiff, DeRoyale Ardeane Johnson, an inmate at the Utah State Prison (USP), filed this *pro se* civil rights suit. See [42 U.S.C.S. § 1983 \(2009\)](#). Plaintiff was allowed to proceed *in forma pauperis*. See [28 U.S.C.S. § 1915 \(2009\)](#).

Based on its review of the pleadings, the Court concludes that official service of process is warranted. The United States Marshals Service is directed to serve a properly issued summons and a copy of Plaintiff's Complaint, along with this Order, upon the following individuals:

Shylah Richins, Med Tech, Utah State Prison
Billie Casper, Grievance Coordinator, Utah State Prison

Once served, Defendants shall respond to the summons in one of the following ways:

(A) If Defendants wish to assert the affirmative defense of Plaintiff's failure to exhaust administrative remedies in

the prison's grievance process, Defendants must,

- (i) file an answer;
- (ii) prepare and file a *Martinez* report limited to the exhaustion issue¹;
- (iii) file a separate summary judgment motion, with a supporting memorandum; and
- (iv) submit a proposed order for dismissing the case based upon Plaintiff's failure to exhaust in word processing format to:
utdecf_prisonerlitigationunit@utd.uscourts.gov.

(B) If Defendants choose to challenge the bare allegations of the complaint, Defendants shall,

- (i) file an answer; or
- (ii) file a motion to dismiss based on Federal Rule of

¹ See [Martinez v. Aaron, 570 F.2d 317 \(10th Cir. 1978\)](#) (approving district court's practice of ordering prison administration to prepare report to be included in pleadings in cases when prisoner has filed suit alleging constitutional violation against institution officials).

In [Gee v. Estes, 829 F.2d 1005 \(10th Cir. 1987\)](#), the Tenth Circuit explained the nature and function of a *Martinez* report, saying:

Under the *Martinez* procedure, the district judge or a United States magistrate [judge] to whom the matter has been referred will direct prison officials to respond in writing to the various allegations, supporting their response by affidavits and copies of internal disciplinary rules and reports. The purpose of the *Martinez* report is to ascertain whether there is a factual as well as a legal basis for the prisoner's claims. This, of course, will allow the court to dig beneath the conclusional allegations. These reports have proved useful to determine whether the case is so devoid of merit as to warrant dismissal without trial.

Id. at 1007.

Civil Procedure 12(b)(6), and submit a proposed order for dismissing the case in word processing format to: utdecf_prisonerlitigationunit@utd.uscourts.gov.

(C) If Defendants choose not to rely on the defense of failure to exhaust and wish to pierce the allegations of the complaint, Defendant must,

- (i) file an answer;
- (ii) prepare and file a *Martinez* report addressing the substance of the complaint;
- (iii) file a separate summary judgment motion, with a supporting memorandum; and
- (iv) submit a proposed order for dismissing the case based upon the summary judgment motion in word processing format to:
utdecf_prisonerlitigationunit@utd.uscourts.gov.

Plaintiff is notified that if Defendants move for summary judgment Plaintiff cannot rest upon the mere allegations in the complaint. Instead, as required by [Federal Rule of Civil Procedure 56\(e\)](#), to survive a motion for summary judgment Plaintiff must allege specific facts, admissible in evidence, showing that there is a genuine issue remaining for trial.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

(1) the United States Marshals Service shall serve a completed summons, a copy of the Complaint and a copy of this Order upon the above-listed defendants;

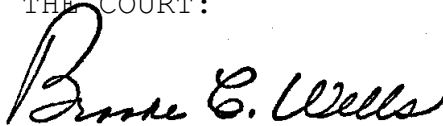
(2) within twenty days of being served, Defendants must file an answer or motion to dismiss and proposed order, as outlined above;

(3) if filing a *Martinez* report with a summary judgment motion and proposed order, Defendants must do so within forty days of filing their answer;

(4) if served with a *Martinez* report and a summary judgment motion or motion to dismiss, Plaintiff may file a response within thirty days.

DATED this 28th day of April, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Brooke C. Wells". The signature is written in a cursive, flowing style.

BROOKE C. WELLS
United States Magistrate Judge

BRETT L. TOLMAN, United States Attorney (No. 8891)
SCOTT J. THORLEY, Assistant United States Attorney (No. 3248)
Attorneys for the United States of America
185 South State Street, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Email: Scott.Thorley@usdoj.gov

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

APR 29 2009

BY D. MARK JONES, CLERK
DEPUTY CLERK

2009 APR 29 P 3:25

DISTRICT OF UTAH

BY: DEPUTY CLERK
IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD WILLIAM HAYCOCK, SR.,
LYLE CLAY SMITH, and
JAMIS MELWOOD JOHNSON,

Defendants.

Case No. 2:09-CR-00133-DB

FIRST ORDER EXCLUDING
TIME UNDER THE
SPEEDY TRIAL ACT

United States Magistrate Judge
Samuel Alba

Defendants Ronald William Haycock, Jamis Melwood Johnson and Lyle Clay Smith appeared with their counsel for an initial appearance and arraignment before United States Magistrate Judge Samuel Alba on April 14, 2009. The defendant Ronald William Haycock was represented by his counsel John Walsh, defendant Jamis Melwood Johnson was represented by the office of the Federal Defender, and defendant Lyle Clay Smith informed the Court that he

would be represented by Roy Cole. The government was represented by the United States Attorney's office.

Matters of discovery were discussed and the Court was informed that the government is proceeding based on electronic discovery pursuant to the normal statement of discovery policy which will be filed in the case. The Court was informed that the government will provide an initial wave of discovery within a week, and will continue to provide discovery as it becomes available. The Court was informed that the volume of documents in the case is fairly extensive, the investigation having involved bank records and loan creation and closing documentation of approximately eighteen real estate transactions. The Court is aware that discovery is extensive, with the relevant documents, reports and related matters occupying more than 20 boxes of documents. Counsel for the defendants informed the Court that with the volume of materials it would require additional time for the defense to obtain and become familiar with the documentation. The Court noted that with this volume of discovery and preparation, it would be appropriate to set a June 29, 2009, review and status hearing to report to the Court on the status of discovery and motions that the defense plans to file. Accordingly, the Court will set the matter for a status conference for June 29, 2009, to deal with any motions and set a trial date.

FINDINGS AND ORDER

Based upon the information presented to the Court about the nature of the case and representations of the defendants that the case continues to be complex and that the defendants require and request additional time to become familiar with, and prepare for the case, and being familiar with files herein, the Court makes the following Findings:

1. This case is deemed to be complex based upon the nature of the prosecution and with

a substantial amount of discovery to be delivered and reviewed by counsel for the defendants.

2. Time necessary for review of the discovery and preparation of motions and preparations for trial is substantial. Taking into account the exercise of due diligence by the parties, it is unreasonable to expect this process to be completed in an adequate way within the time anticipated by the Speedy Trial Act, Title 18 U.S.C. Sections 3161; et seq., see especially Section 3161(h)(8)(A) and (B)(ii).

3. The Court further stated that in view of the complexity of the matter, the ends of justice would be best served by setting a status conference date of June 29, 2009, for defense counsel to make additional review of the discovery and evidence in this matter. Counsel should be prepared at that time to report on the status of this review, and for a setting of a firm trial date and related deadlines. The ends of justice so served outweigh the best interest of the defendants, the public or the United States in a speedy trial. All time from the date of the initial appearance up through and including the date of the proposed status hearing is excludable from any calculation required by the Speedy Trial Act.

4. The Court also finds, in accordance with the provisions of 18 U.S.C. §§ 3161 (h) (8) (A) and 3161(h)(8)(B)(iv), that the ends of justice, the public interest, and the defendants' interests are served by these delays continuing the trial date to provide proper time to prepare for trial, outweigh the best interest of the public and the defendants in a speedy trial.

Based upon the foregoing Findings, it is hereby ORDERED:

1. A status conference in this matter is set for June 29, 2009, at 9:00 AM. Counsel shall report on the status of review of discovery and evidence with a focus on setting a trial date.

2. All time from April 14, 2009, up through and including June 29, 2009 (or whatever date the status conference and trial setting actually occurs), is excludable and is hereby excluded

from any calculation required by the Speedy Trial Act, Title 18 U.S.C. § 3161 (h) (1) (F) 3161, et seq.

DATED this 22nd day of April, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S. Alba', is written over a horizontal line.

SAMUEL ALBA
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
	)	Case No. 2:09-CR-133
Plaintiff,)	
)	
vs.)	
	)	ORDER ALLOWING MENTAL
LYLE CLAY SMITH,	)	HEALTH ASSESSMENT
)	
Defendant.)	

As a further condition of release, the Court hereby directs Pretrial Services to arrange a mental health assessment for defendant Lyle Clay Smith. Said evaluation is to be done through a local facility.

DATED this 30th day of April, 2009.

BY THE COURT:



SAMUEL ALBA
United States Magistrate Judge

RONALD J. YENGICH (#3580)
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320

**IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY LYNN HARVEY,

Defendant.

ORDER TO CONTINUE

Case No. 2:09-CR-00190

Judge Ted Stewart
Magistrate Paul Warner

Based upon the motion and stipulation of counsel and for good cause shown;

THIS COURT HEREBY FINDS that the ends of justice served in granting a continuance in the above-entitled matter outweigh the best interests of the public and the defendants in a speedy trial. The Court further finds that the parties have, despite the exercise, of due diligence, not yet completed plea negotiations.

Pursuant to Title 18, § 3161(8)(A) and (B)(iv) of the Speedy Trial Act, the Jury Trial date in this matter, currently set for June 1st, 2009, is hereby continued. The period of delay resulting from this continuance is hereby ordered excludable pursuant to the Act.

IT IS FURTHER ORDERED that the Jury Trial be continued to the
26th day of August, 2009, at the hour of 8:30 a.m., before Judge Stewart.

SIGNED BY MY HAND this 30th day of April, 2009.

BY THE COURT:



HONORABLE TED STEWART
United States District Court Judge

**United States District Court
for the District of Utah**

Criminal Pretrial Instructions

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:09-CR-231 DAK
Plaintiff,	:	
vs.	:	ORDER SETTING DISPOSITION
	:	DATE AND EXCLUDING TIME
YONIC ALEJO-CHAVEZ,	:	FROM SPEEDY TRIAL
	:	COMPUTATION
Defendant.	:	

This matter came before this Court on 4/30/09 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Carlos Garcia (for Kris Angelos). The United States was represented by Assistant United States Attorney Karin Fojtik. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

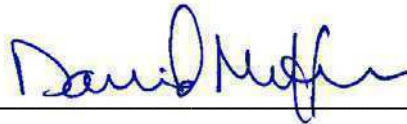
The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for 6/25/09 at 2:30 p.m. before Judge Dale A. Kimball.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between 4/30/09 (the date of this appearance), and 6/25/09 (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 30th day of April, 2009.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States Magistrate Judge

**United States District Court
for the District of Utah**

Criminal Pretrial Instructions

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

**United States District Court
for the District of Utah**

Criminal Pretrial Instructions

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ROBERT ANDREW LUCERO

Plaintiff,

v.

UNITED STATES DISTRICT COURT,

Defendant.

ORDER DIRECTING PLAINTIFF TO
AMEND HIS COMPLAINT

Civil No. 2:09 cv 55

Judge Tena Campbell

Magistrate Judge Brooke C. Wells

On January 22, 2009, Plaintiff Robert Lucero who is proceeding pro se, filed a civil rights Complaint under [42 U.S.C. § 1983](#) with the Court.¹ After reviewing the Complaint it appears that Plaintiff misfiled his action. Plaintiff's Complaint is essentially blank. There are no facts asserted in support of a cause of action and there are no causes of action listed in the Complaint. Instead, under the request for relief Plaintiff has written: "Social Security Disability Benefits."²

Attached to the Complaint is a notice of an appeals council action denying Plaintiff's request for review of an Administrative Law Judge's (ALJ) decision regarding social security benefits. Also attached to the Complaint is a letter from attorney John Borsos notifying Plaintiff that he would be unable to assist Plaintiff with his lawsuit. Mr. Borsos informs Plaintiff of the filing deadline to file an appeal of the ALJ's decision and advises him that he may start the case by filing the paperwork himself.

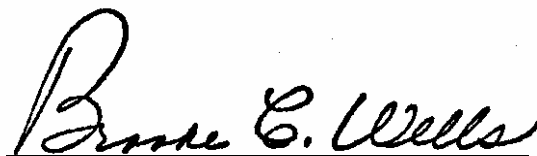
¹ Docket no. 3.

² Compl. p. 6.

Finally, the civil cover sheet for Plaintiff's case lists the United States Federal Government as the defendant while the caption on the Complaint lists the Federal United States District Court as the defendant. And, for the nature of suit on the civil cover sheet, Plaintiff checked "Assault, Libel & Slander" under the Personal Injury section.

Given these discrepancies and the complete lack of factual background asserted by Plaintiff *sua sponte* dismissal of this action by the Court may be proper.³ But, in accordance with the preferred practice of allowing a plaintiff an opportunity to amend,⁴ the Court will allow Plaintiff an opportunity to remedy the faults in his Complaint. Accordingly, the Court orders that Plaintiff, by May 22, 2009, set forth in writing, the specific cause(s) of action alleged and pursuant to local rule 7, the "specific grounds of the relief sought." This may be done by filing a new amended complaint. Failure to comply with this order will result in a recommendation of dismissal of this case.

DATED this 29th day of April, 2009.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is fluid and cursive, with the first name "Brooke" being more prominent and the last name "Wells" following in a similar style.

Brooke C. Wells
United States Magistrate Judge

³ See [Hall v. Bellmon](#), 935 F.2d 1106, 1110 (10th Cir. 1991).

⁴ See [McKinney v. State of Oklahoma](#), 925 F.2d 363, 365 (10th Cir. 1991).

FILED
U.S. DISTRICT COURT

2009 APR 30 A 10:14

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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APR 29 2009

OFFICE OF
JUDGE TENA CAMPBELL

SHAREL S. REBER (#7966)
Assistant Attorney General
MARK SHURTLEFF (#4666)
Attorney General
Attorneys for Respondent
160 East 300 South
P. O. Box 140812
Salt Lake City, Utah 84114-0812
Telephone: (801) 366-0216


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DANILO D. PASCUAL,	:	ORDER GRANTING LEAVE TO FILE
	:	A RESPONSE TO PETITIONER'S
Petitioner,	:	REPLY
vs.	:	
STEVEN TURLEY,	:	Civil No. 2:09-CV-79 TC
Respondent.	:	Judge Tena Campbell

Based on review of the Respondent's *Motion for Leave to File a Response to Petitioner's Reply*, and good cause appearing, **IT IS HEREBY ORDERED**

That the Respondent is hereby granted leave to file a response to Petitioner's Reply to State's Response.

DATED this 29 day of April, 2009.


Judge Tina Campbell
U. S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

LEONARD JAMES LUCERO,	)	ORDER TO SHOW CAUSE
)	
Plaintiff,	)	Case No. 2:09-CV-101 CW
)	
v.)	
)	
MUNICIPAL CORP.,	)	District Judge Clark Waddoups
)	
Defendant.	)	Magistrate Judge Paul Warner

In this prisoner civil rights case,¹ on February 3, 2009, the Court ordered Plaintiff to within thirty days pay an initial partial filing fee (IPFF) of \$2. Plaintiff still has not paid it.

IT IS THEREFORE ORDERED that Plaintiff must within thirty days show cause why his case should not be dismissed for failure to pay his IPFF.

IT IS SO ORDERED.

DATED this 30th day of April, 2009.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

¹ See 42 U.S.C.S. § 1983 (2008).

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

ROBERT CHARLES ERICKSEN,
Plaintiff,

v.

SCOTT JOHNSON et al.,
Defendants.

**ORDER TO AMEND DEFICIENT
COMPLAINT**

Case No. 2:09-CV-329 TC

District Judge Tena Campbell

Plaintiff, Robert Charles Ericksen, an inmate at the Utah State Prison, filed this *pro se* civil rights suit. See [42 U.S.C.S. § 1983 \(2009\)](#). Plaintiff was allowed to proceed *in forma pauperis*. See [28 id. 1915](#). Reviewing the complaint under [28 U.S.C. § 1915\(e\)](#), the Court has determined that Plaintiff's complaint is deficient as described below.

Deficiencies in Complaint

Complaint:

- (a) does not clearly identify each named defendant. (John Does must each be individually numbered and described in detail.)
- (b) does not allege specific allegations supporting a specific cause of action against the following named defendants: Parole Officer Allen Shane Nelson and Officer John Doe of Ephraim Police Department.
- (3) inappropriately alleges civil rights violations against Defendants Jack Ford and Governor Jon Huntsman on a respondeat superior theory.
- (4) does not specify causes of action with specific facts against Defendant Agent Scott Johnson.

- (5) does not specify causes of action with specific facts regarding denial of grievances against Defendants Hearing Officer Tom Anderson, Debi S. Ogden of AP&P, Supervisor Richard Laursen of AP&P, or Captain Coulter of Central Utah Correctional Facility.

Instructions to Plaintiff

Under Rule 8 of the Federal Rules of Civil Procedure a

complaint is required to contain "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . .

(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." [Fed. R. Civ. P. 8\(a\)](#). The

requirements of [Rule 8\(a\)](#) are intended to guarantee "that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest." [TV Communications](#)

[Network, Inc. v. ESPN, Inc., 767 F. Supp. 1062, 1069 \(D. Colo. 1991\)](#), *aff'd*, [964 F.2d 1022 \(10th Cir. 1992\)](#).

Pro se litigants are not excused from compliance with the minimal pleading requirements of Rule 8. "This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted." [Hall v. Bellmon, 935 F.2d 1106, 1009 \(10th Cir. 1991\)](#). Moreover, "it is not the proper function of the Court to assume the role of advocate for a pro se

litigant." [Id. at 1110](#). Thus, the Court cannot "supply additional facts, [or] construct a legal theory for plaintiff that assumes facts that have not been pleaded." [Dunn v. White, 880 F.2d 1188, 1197 \(10th Cir. 1989\)](#).

Plaintiff should consider the following points before refiling his complaint. First, the revised complaint must stand entirely on its own and shall not refer to, or incorporate by reference, any portion of the original complaint. See [Murray v. Archambo, 132 F.3d 609, 612 \(10th Cir. 1998\)](#) (stating amended complaint supercedes original). Second, the complaint must clearly state what each individual defendant did to violate Plaintiff's civil rights. See [Bennett v. Passic, 545 F.2d 1260, 1262-63 \(10th Cir. 1976\)](#) (stating personal participation of each named defendant is essential allegation in civil rights action). Third, Plaintiff cannot name an individual as a defendant based solely on his or her supervisory position. See [Mitchell v. Maynard, 80 F.3d 1433, 1441, \(10th Cir. 1996\)](#) (stating supervisory status alone is insufficient to support liability under § 1983). Fourth, if Plaintiff's claims relate to the conditions of Plaintiff's current confinement Plaintiff should seeks assistance from the prison contract attorneys in preparing initial pleadings. And, finally, Plaintiff is warned that litigants who have had three *in forma pauperis* cases dismissed as

frivolous or meritless will be restricted from filing future lawsuits without prepaying fees.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

(1) Plaintiff shall have **THIRTY (30) DAYS** from the date of this order to cure the deficiencies noted above;

(2) the Clerk's Office shall mail Plaintiff a copy of the Pro Se Litigant Guide;

(3) if Plaintiff fails to timely cure the above deficiencies according to the instructions here this action will be dismissed without further notice.

DATED this 30th day of April, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL, CHIEF JUDGE
United States District Court

BRETT L. TOLMAN, United States Attorney
F. GIL BRUNSON, Special Assistant United States Attorney
Legal Office
1 Tooele Army Depot, Building 1
Tooele, Utah 84074-5000

APR 29 2009

D. MARK JONES, CLERK
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA	)	ENTRY OF PLEA AND
	)	STIPULATED DISPOSITION
Plaintiff,)	
	)	Case No. 2:09po00224
v.)	
	)	Citation No. 1642201
PAUL A. VALDEZ)	
	)	Magistrate Paul M. Warner
Defendant)	

The parties in the above case respectfully submit this Entry of Plea and Stipulated Disposition.

The parties hereby stipulate and agree as follows:

1. The Defendant waives his rights as set forth in the Federal Rules of Criminal Procedure 58(b), including his right to an attorney, his right to trial, judgment and sentencing before a district judge and his right to appear before the Court in person.

2. Defendant hereby enters a plea of guilty to the charge of operating a vehicle without a valid driver license in possession in violation of Utah Code § 53-3-217 (Count III). The Defendant agrees to pay to the Clerk of the United States District Court a fine of \$20 plus the \$25.00 administrative fee and the \$5.00 special assessment for a total of \$50.00. The fine must be paid in full by May 27, 2009.

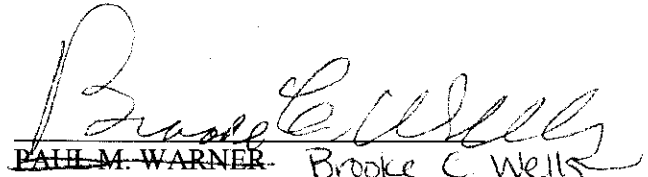
3. The U.S. Attorney agrees to dismiss the charges of speeding (Count I) in violation of Utah Code § 41-6a-601 and operating an automobile without evidence of owner's or operator's security in violation of Utah Code § 41-12a-303.2 (Count II).

WHEREFORE, it is hereby ordered that:

1. The Court accepts the defendant's plea of guilty to Count III and the U.S. Attorney's motion to dismiss Counts I and II.

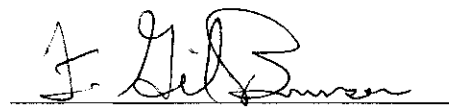
2. The Defendant shall pay a fine of \$20.00, plus the \$25.00 administrative fee and the \$5.00 special assessment for a total fine of \$50.00. This fine must be paid in full by May 27, 2009.

Done this 29th day of April, 2009.

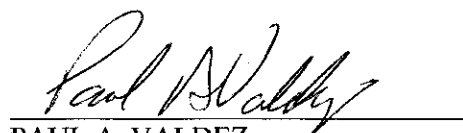

~~PAUL M. WARNER~~ Brooke C. Wells
United States Magistrate

SUBMITTED BY:

BRETT L. TOLMAN
United States Attorney


F. GIL BRUNSON
Special Assistant United States Attorney

APPROVED AS TO FORM AND CONTENT:


PAUL A. VALDEZ
Defendant
1922 N 270 W
TOOELE, UT 84074

BRETT L. TOLMAN, United States Attorney
F. GIL BRUNSON, Special Assistant United States Attorney
Legal Office
1 Tooele Army Depot, Building 1
Tooele, Utah 84074-5000

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

APR 29 2009

BY D. MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA	)	ENTRY OF PLEA AND
	)	STIPULATED DISPOSITION
Plaintiff,)	
	)	Case No. 2:09po00225
v.)	
	)	Citation No. 1642202
EZRA J. BECKHAM)	
	)	Magistrate Paul M. Warner
Defendant)	

The parties in the above case respectfully submit this Entry of Plea and Stipulated Disposition.

The parties hereby stipulate and agree as follows:

1. The Defendant waives his rights as set forth in the Federal Rules of Criminal Procedure 58(b), including his right to an attorney, his right to trial, judgment and sentencing before a district judge and his right to appear before the Court in person.

2. Defendant hereby enters a plea of guilty to the charge of failure to stop at a stop sign in violation of Utah Code § 41-6a-902 (Count I). The Defendant agrees to pay to the Clerk of the United States District Court a fine of \$45 plus the \$25.00 administrative fee and the \$5.00 special assessment for a total of \$75.00. The fine must be paid in full by May 27, 2009.

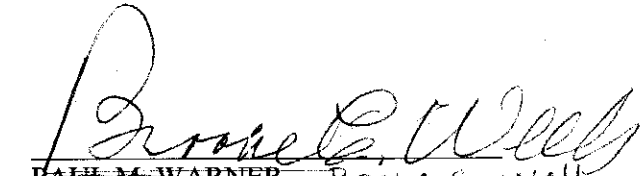
3. The U.S. Attorney agrees to dismiss the charge of operating an automobile without evidence of owner's or operator's security in violation of Utah Code § 41-12-303.2 (Count II).

WHEREFORE, it is hereby ordered that:

1. The Court accepts the defendant's plea of guilty to Count I and the U.S. Attorney's motion to dismiss Count II.

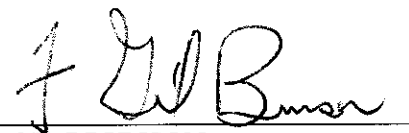
2. The Defendant shall pay a fine of \$45.00, plus the \$25.00 administrative fee and the \$5.00 special assessment for a total fine of \$75.00. This fine must be paid in full by May 27, 2009.

Done this 29th day of April, 2009.



~~PAUL M. WARNER~~ Brooke C. Wells
United States Magistrate

SUBMITTED BY:

BRETT L. TOLMAN
United States Attorney


F. GIL BRUNSON
Special Assistant United States Attorney

APPROVED AS TO FORM AND CONTENT:


EZRA J. BECKHAM
Defendant
847 White Pine Dr.
Tooele, UT 84074